

BILL ANALYSIS

Senate Research Center
80R4427 KEL-D

H.B. 1303
By: Pena (West)
Criminal Justice
5/8/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005, the legislature enacted legislation requiring notice of a hearing regarding an expunction or an order of non-disclosure to be sent by secure electronic mail if requested in writing by the petitioner. The purpose of the written request was to create a paper record that the notification took place. However, technology now exists that has the capability of generating proof of the receipt of such notifications without the need for paper trails.

H.B. 1303 requires each official, agency, or other entity named in a petition or order to be given reasonable notice of the hearing or order by certified mail, secure electronic mail, or facsimile transmission. The bill also eliminates the requirement that the petitioner request such notice in writing in order for it to be sent by a secure electronic mail or facsimile transmission and authorizes the notice to be sent by an electronic transmission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the public safety director in SECTION 3 (Section 411.081, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2(c), Article 55.02, Code of Criminal Procedure, to require the court to give to each official, agency, or other entity named in a petition for expunction from an acquitted defendant reasonable notice of the hearing regarding that matter by secure electronic transmission, among other options for notice.

SECTION 2. Amends Section 3(c), Article 55.02, Code of Criminal Procedure, to make conforming changes.

SECTION 3. Reenacts Section 411.081(g), Government Code, as amended by Chapters 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, and Section 411.081(g-1), Government Code, as added by Chapters 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, as Sections 411.081(g), (g-1), (g-1a), and (g-1b), and amends those subsections as follows:

(g) Requires the clerk of the court to send all relevant criminal history record information contained in an order of nondisclosure or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to the Crime Records Service of the Department of Public Safety (DPS) not later than the 15th business day after the date the order is issued under this section. Deletes existing text providing for the transmission of such information.

(g-1) Requires DPS to seal any criminal history record information maintained by DPS that is the subject of the order not later than 10 business days after receipt of an order or relevant criminal history record information contained in an order under Subsection (g). Makes conforming changes.

(g-1a) Requires the public safety director (director) to adopt rules regarding minimum standards for the security of secure electronic mail, electronic transmissions, and facsimile transmissions under Subsections (g) and (g-1). Requires the director, in

adopting rules under this subsection, to consult with the Office of Court Administration of the Texas Judicial System.

(g-1b) Deletes existing text requiring DPS to send a copy of the order by mail or secure electronic mail or facsimile transmission to certain governmental entities believed to have criminal history record information that is the subject of the order. Makes conforming changes.

SECTION 4. (a) Provides that the change in law made by this Act to Article 55.02, Code of Criminal Procedure, applies to a person seeking expunction of records and files relating to an arrest regardless of whether the arrest occurred before, on, or after the Act's effective date.

(b) Provides that the change in law made by this Act to Section 411.081, Government Code, applies to information related to a deferred adjudication or similar procedure described by Subsection (f) of that section, regardless of whether the deferred adjudication or procedure is entered before, on, or after the Act's effective date.

(c) Requires DPS to adopt rules concerning the standards for secure electronic mail, electronic transmissions, and facsimile transmissions as required by Section 411.081, Government Code, as amended by this Act, not later than January 1, 2008.

(d) Requires a court that issues and transmits orders of nondisclosure as described by Section 411.081, Government Code, as amended by this Act, and the Crime Records Service of DPS to comply with the secure electronic mail, electronic transmission, and facsimile transmission standards adopted by DPS under Section 411.081, Government Code, not later than June 1, 2008.

SECTION 5. Effective date: September 1, 2007.